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Supreme Court, U.S.
FILED
FEB 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 88-1283

SUPREME COURT OF THE UNITED STATES

October Term, 1988

H. GARY WELLS, Petitioner,

-vs-

GREGORY LENT, Respondent.

MOTION FOR LEAVE TO PROCCED IN FORMA PAUPERIS

PROOF OF SERVICE

STATE APPELLATE DEFENDER OFFICE

JAMES R. NEUHARD
Defender
Counsel of Record

RALPH C. SIMPSON
Assistant Defender
Counsel For Respondent

1200 Sixth Avenue
Third Floor, North Tower
Detroit, Michigan 48226
(313) 256-2814

February 16, 1989

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SUPREME COURT OF THE UNITED STATES

October Term, 1988

H. GARY WELLS, Petitioner,

-vs-

GREGORY LENT, Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS

The respondent, Gregory Lent, who is now held in a Michigan Penitentiary, asks leave to file the attached Memorandum Opposing Certiorari and to proceed in forma pauperis pursuant to Rule 46. Mr. Lent has been granted permission to proceed in forma pauperis in the Federal District Court and the United States Court of Appeals for the Sixth Circuit in proceedings below.

Respectfully submitted,

JAMES R. NEUHARD
Defender
Counsel of Record

RALPH C. SIMPSON
Assistant Defender
Counsel For Respondent

STATE APPELLATE DEFENDER OFFICE
1200 Sixth Avenue
Third Floor, North Tower
Detroit, Michigan 48226
(313) 256-2814

Dated: February 16, 1989

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MEMORANDUM OPPOSING CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

Respondent represents to the Court as follows:

1. The Isabella County Prosecutor lacks standing to file a petition for certiorari to the United States Court of Appeals for the Sixth Circuit and the petition should therefore be denied. 28 U.S.C. §1254(1) provides that the Supreme Court may review cases in the federal courts of appeals by "writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree". The Isabella County Prosecutor was not a party to the Sixth Circuit proceedings below and he therefore may not properly file a petition to certiorari pursuant to §1254(1).

THEREFORE, it appears that Petitioner's application for a writ of certiorari is improperly filed and should be denied.

Respectfully submitted,

JAMES R. NEUHARD
Defender
Counsel of Record

RALPH C. SIMPSON
Assistant Defender
Counsel For Respondent

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PROOF OF SERVICE

I, JAMES R. NEUHARD, hereby certify that one (1) copy of an Appearance Form, Motion to Proceed in Forma Pauperis, and Memorandum Opposing Certiorari, have been served on opposing counsel, Frank J. Kelley, Attorney General, State of Michigan, 525 West Ottawa Street, 760 Law Building, Lansing, Michigan, 48913, and Larry J. Burdick, 200 N. Main Street, Mt. Pleasant, Michigan 48858, by placing said documents in a properly addressed envelopes with postage prepaid and placing said envelopes in the United States mail box located in Detroit, on this 16th day of February, 1989.

February 16, 1989

JAMES R. NEUHARD
Defender
Counsel of Record